

ERCOT Antitrust Guidelines Review

**Presentation to ERCOT
Technical Advisory Committee**

September 25, 2014



Antitrust Admonition

ERCOT strictly prohibits Market Participants...from using...ERCOT...as a forum for engaging in practices or communications that violate the antitrust laws.

The ERCOT Board has approved guidelines for members of ERCOT Committees, Subcommittees and Working Groups to be reviewed and followed by each Market Participant attending ERCOT meetings. If you have not received a copy of these Guidelines, copies are available at the Client Relations desk.

Please remember your ongoing obligation to comply with all applicable laws, including the antitrust laws.



ANTITRUST GUIDELINES FOR MEMBERS OF ERCOT COMMITTEES, SUBCOMMITTEES AND WORKING GROUPS

Basic antitrust principles:

- Competitors cannot agree to fix prices.
- Competitors cannot agree to boycott a third party.
- Competitors cannot agree to divide markets or customers or limit or allocate production.
- It's also unlawful to monopolize, attempt to monopolize or conspire to monopolize

➤ **“Report questionable conduct to ERCOT Legal”**

2013 Antitrust Training for ERCOT Committees and Subcommittees

Why should you care?
Significant consequences

- **Civil Penalties**
- **Treble Damages & Attorney's Fees**
- **Criminal Fines**
- **Jail Sentences**



The right balance

- **Yes, be aware. The antitrust laws are serious laws with potentially serious consequences.**
- **But awareness should not inhibit or chill legitimate ERCOT activities.**

Sherman Act § 1

“Every contract, combination . . . , or conspiracy in restraint of trade or commerce . . . is declared to be illegal.”

State Action immunity

Actions by the States in their governmental capacities as sovereign regulators are exempt from the Sherman Act.

State Action immunity

“State Action” can include acts of governmental subdivisions and even private parties that implement State policies.

State Action immunity - ERCOT

ERCOT actions that restrict competition likely qualify for State Action immunity if they are reasonably contemplated by PURA and PUCT rules.

State Action immunity - ERCOT

PURA contemplates PUCT and ERCOT regulations in 3 areas that may restrict competition:

- **Ensuring the reliability and adequacy of the ERCOT grid**
- **Imposing requirements related to operation and oversight of the competitive market for production & sale of electricity**
- **Regulating T&D services**

State Action immunity - ERCOT

Yes:

Likely applies to activities within the scope of and in accordance with PURA and PUCT Rules

No:

Does not extend to actions by Board or committee members that are outside the scope of ERCOT's statutory charge or those individuals' official duties.

***Noerr* immunity**

In general, private parties have antitrust immunity for individual or concerted efforts to persuade the government to take action that restricts competition.

***Noerr* immunity**

**Applies to advocacy at the PUCT and
very likely applies to advocacy at ERCOT.**

The Antitrust “Rule of Reason”

Most ERCOT actions, if not immune, would be carefully evaluated under the “Rule of Reason” to consider the unique aspects of the electricity market.

*Disclaimer

This presentation is not intended as legal advice for you or your company. If you need legal advice, please consult your attorney.

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